

AMENDED IN ASSEMBLY MAY 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 679

Introduced by Assembly Member Allen

February 17, 2011

An act to amend Section ~~65584.07~~ 65584.6 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 679, as amended, Allen. Land use: housing element.

The Planning and Zoning Law requires a city or county to prepare and adopt a comprehensive, long-term general plan, and requires the general plan to include specified, mandatory elements, including a housing element. ~~That law requires the housing element, in turn, to contain, among other items, an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of those needs.~~

~~That law requires, for purposes of that assessment and inventory, the city’s or county’s share of the regional housing need to include that share of the housing need of persons at all income levels within the city or county. That law also requires the Department of Housing and Community Development, in consultation with each council of governments, to determine each region’s existing and projected housing need, as specified, and the appropriate council of governments, or for cities and counties without a council of governments, the department, to adopt a final regional housing need plan that allocates a share of the regional housing need to each city and county, as specified.~~

~~That law further requires the council of governments, or department, whichever assigned a county’s share of regional housing needs, to~~

~~reduce the county's share if specified conditions relating to the transfer of shares are met, including the condition that the county's share of low-income and very low income housing only be reduced in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.~~

~~This bill would provide that, with respect to that condition, in the case of a transfer in which a county provides funding for affordable housing construction within a city, that transfer does not have to be proportional across income categories, but may reflect the specific affordability of units that are being funded.~~

That law authorizes the County of Napa, during a specified period ending June 30, 2007, to meet up to 15% of its existing share of the regional housing need for lower income households by committing funds for the purpose of constructing affordable housing units, and constructing those units in one or more cities within the county, only after specified conditions are met. Among those conditions is a requirement that the receiving city demonstrate that it has met, within a specified period, at least 20% of its share of the regional need for housing for very low income households allocated to the city, as specified.

This bill would extend the period of this authorization to October 31, 2022, and would delete the requirement that the receiving city demonstrate that it has met at least 20% of its share of the regional need for housing for very low income households allocated to the city.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65584.6 of the Government Code is
2 amended to read:
3 65584.6. (a) The County of Napa may, ~~during its current~~
4 ~~housing element planning period, identified in Section 65588,~~ meet
5 up to 15 percent of its existing share of the regional housing need
6 for lower income households, as defined in Section 65584, by
7 committing funds for the purpose of constructing affordable
8 housing units, and constructing those units in one or more cities
9 within the county, only after all of the following conditions are
10 met:

1 (1) An agreement has been executed between the county and
2 the receiving city or cities, following a public hearing held by the
3 county and the receiving city or cities to solicit public comments
4 on the draft agreement. The agreement shall contain information
5 sufficient to demonstrate that the county and city or cities have
6 complied with the requirements of this section and shall also
7 include the following:

8 (A) A plan and schedule for timely construction of dwelling
9 units.

10 (B) Site identification by street address for the units to be
11 developed.

12 (C) A statement either that the sites upon which the units will
13 be developed were identified in the receiving city's housing
14 element as potential sites for the development of housing for
15 lower-income households, or that the units will be developed on
16 previously unidentified sites.

17 (D) The number and percentage of the county's lower-income
18 housing needs previously transferred, for the appropriate planning
19 period, pursuant to this section.

20 (2) The council of governments that assigned the county's share
21 receives and approves each proposed agreement to meet a portion
22 of the county's fair share housing allocation within one or more
23 of the cities within the county after taking into consideration the
24 criteria of subdivision (a) of Section 65584. If the council of
25 governments fails to take action to approve or disapprove an
26 agreement between the county and the receiving city or cities
27 within 45 days following the receipt of the agreement, the
28 agreement shall be deemed approved.

29 (3) The city or cities in which the units are developed agree not
30 to count the units towards their share of the region's affordable
31 housing need.

32 (4) The county and the receiving city or cities, based on
33 substantial evidence on the record, make the following findings:

34 (A) Adequate sites with appropriate zoning exist in the receiving
35 city or cities to accommodate the units to be developed pursuant
36 to this section. The agreement shall demonstrate that the city or
37 cities have identified sufficient vacant or underutilized or vacant
38 and underutilized sites in their housing elements to meet their
39 existing share of regional housing need, as allocated by the council
40 of governments pursuant to subdivision (a) of Section 65584, in

1 addition to the sites needed to construct the units pursuant to this
2 section.

3 (B) If needed, additional subsidy or financing for the
4 construction of the units is available.

5 (C) The receiving city or cities have housing elements that have
6 been found by the Department of Housing and Community
7 Development to be in compliance with this article.

8 (5) If the sites upon which units are to be developed pursuant
9 to this section were previously identified in the receiving city's
10 housing element as potential sites for the development of housing
11 sufficient to accommodate the receiving city's share of the lower
12 income household need identified in its housing element, then the
13 receiving city shall have amended its housing element to identify
14 replacement sites by street address for housing for lower-income
15 households. Additionally, the Department of Housing and
16 Community Development shall have received and reviewed the
17 amendment and found that the city's housing element continues
18 to comply with this article.

19 (6) The county and receiving city or cities shall have completed,
20 and provided to the department, the annual report required by
21 subdivision (b) of Section 65400.

22 (7) For a period of five years after a transfer occurs, the report
23 required by subdivision (b) of Section 65400 shall include
24 information on the status of transferred units, implementation of
25 the terms and conditions of the transfer agreement, and information
26 on any dwelling units actually constructed, including the number,
27 type, location, and affordability requirements.

28 ~~(8) The receiving city demonstrates that it has met, in the current~~
29 ~~or previous housing element cycle, at least 20 percent of its share~~
30 ~~of the regional need for housing for very low-income households~~
31 ~~allocated to the city pursuant to Section 65584.~~

32 (b) The credit that the county receives pursuant to this section
33 shall not exceed 40 percent of the number of units that are
34 affordable to lower income households and constructed and
35 occupied during the same housing element cycle in unincorporated
36 areas of the county. The county shall only receive the credit after
37 the units have been constructed and occupied. Within 60 days of
38 issuance of a certificate of occupancy for the units, the county shall
39 inform the council of governments and the department in writing
40 that a certificate of occupancy has been issued.

1 (c) Concurrent with the review by the council of governments
2 prescribed by this section, the Department of Housing and
3 Community Development shall evaluate the agreement to
4 determine whether the city or cities are in substantial compliance
5 with this section. The department shall report the results of its
6 evaluation to the county and city or cities for inclusion in their
7 record of compliance with this section.

8 (d) If at the end of the five-year period identified in subdivision
9 (c) of Section 65583, any percentage of the regional share
10 allocation has not been constructed as provided pursuant to
11 subdivision (a), or, after consultation with the department, the
12 council of governments determines that the requirements of
13 paragraphs (5) and (7) of subdivision (a) have not been
14 substantially complied with, the council of governments shall add
15 the unbuilt units to Napa County's regional share allocation for
16 the planning period of the next periodic update of the housing
17 element.

18 (e) Napa County shall not meet a percentage of its share of the
19 regional share pursuant to subdivision (a) on or after ~~June 30,~~
20 ~~2007~~ *October 31, 2022*, unless a later enacted statute, that is
21 enacted before ~~June 30, 2007~~ *October 31, 2022*, deletes or extends
22 that date.

23 ~~SECTION 1. Section 65584.07 of the Government Code is~~
24 ~~amended to read:~~

25 ~~65584.07. (a) During the period between adoption of a final~~
26 ~~regional housing needs allocation and the due date of the housing~~
27 ~~element update under Section 65588, the council of governments,~~
28 ~~or the department, whichever assigned the county's share, shall~~
29 ~~reduce the share of regional housing needs of a county if all of the~~
30 ~~following conditions are met:~~

31 ~~(1) One or more cities within the county agree to increase its~~
32 ~~share or their shares in an amount equivalent to the reduction.~~

33 ~~(2) The transfer of shares shall only occur between a county~~
34 ~~and cities within that county.~~

35 ~~(3) The county's share of low-income and very low income~~
36 ~~housing shall be reduced only in proportion to the amount by which~~
37 ~~the county's share of moderate- and above moderate-income~~
38 ~~housing is reduced. However, in the case of a transfer in which a~~
39 ~~county provides funding for affordable housing construction within~~
40 ~~a city, that transfer does not have to be proportional across income~~

1 categories, but may reflect the specific affordability of units that
2 are being funded.

3 ~~(4) The council of governments or the department, whichever~~
4 ~~assigned the county's share, shall approve the proposed reduction,~~
5 ~~if it determines that the conditions set forth in paragraphs (1), (2),~~
6 ~~and (3) above have been satisfied. The county and city or cities~~
7 ~~proposing the transfer shall submit an analysis of the factors and~~
8 ~~circumstances, with all supporting data, justifying the revision to~~
9 ~~the council of governments or the department. The council of~~
10 ~~governments shall submit a copy of its decision regarding the~~
11 ~~proposed reduction to the department.~~

12 ~~(b) (1) The county and cities that have executed transfers of~~
13 ~~regional housing needs pursuant to subdivision (a) shall use the~~
14 ~~revised regional housing need allocation in their housing elements~~
15 ~~and shall adopt their housing elements by the deadlines set forth~~
16 ~~in Section 65588.~~

17 ~~(2) A city that has received a transfer of a regional housing need~~
18 ~~pursuant to subdivision (c) shall adopt or amend its housing~~
19 ~~element within 30 months of the effective date of incorporation.~~

20 ~~(3) A county or city that has received a transfer of regional~~
21 ~~housing need pursuant to subdivision (d) shall amend its housing~~
22 ~~element within 180 days of the effective date of the transfer.~~

23 ~~(4) A county or city is responsible for identifying sites to~~
24 ~~accommodate its revised regional housing need by the deadlines~~
25 ~~set forth in paragraphs (1), (2), and (3).~~

26 ~~(5) All materials and data used to justify any revision shall be~~
27 ~~made available upon request to any interested party within seven~~
28 ~~days upon payment of reasonable costs of reproduction unless the~~
29 ~~costs are waived due to economic hardship. A fee may be charged~~
30 ~~to interested parties for any additional costs caused by the~~
31 ~~amendments made to former subdivision (c) of Section 65584 that~~
32 ~~reduced from 45 to 7 days the time within which materials and~~
33 ~~data were required to be made available to interested parties.~~

34 ~~(e) (1) If an incorporation of a new city occurs after the council~~
35 ~~of governments, subregional entity, or the department for areas~~
36 ~~with no council of governments, has made its final allocation under~~
37 ~~Section 65584.03, 65584.04, 65584.06, or 65584.08, a portion of~~
38 ~~the county's allocation shall be transferred to the new city. The~~
39 ~~city and county may reach a mutually acceptable agreement for~~
40 ~~transfer of a portion of the county's allocation to the city, which~~

1 shall be accepted by the council of governments, subregional entity,
2 or the department, whichever allocated the county's share. If the
3 affected parties cannot reach a mutually acceptable agreement,
4 then either party may submit a written request to the council of
5 governments, subregional entity, or to the department for areas
6 with no council of governments, to consider the facts, data, and
7 methodology presented by both parties and determine the number
8 of units, by income category, that should be transferred from the
9 county's allocation to the new city.

10 (2) ~~Within 90 days after the date of incorporation, either the~~
11 ~~transfer, by income category, agreed upon by the city and county,~~
12 ~~or a written request for a transfer, shall be submitted to the council~~
13 ~~of governments, subregional entity, or to the department, whichever~~
14 ~~allocated the county's share. A mutually acceptable transfer~~
15 ~~agreement shall be effective immediately upon receipt by the~~
16 ~~council of governments, the subregional entity, or the department.~~
17 ~~A copy of a written transfer request submitted to the council of~~
18 ~~governments shall be submitted to the department. The council of~~
19 ~~governments, subregional entity, or the department, whichever~~
20 ~~allocated the county's share, shall make the transfer effective within~~
21 ~~180 days after receipt of the written request. If the council of~~
22 ~~governments allocated the county's share, the transfer shall be~~
23 ~~based on the methodology adopted pursuant to Section 65584.04~~
24 ~~or 65584.08. If the subregional entity allocated the subregion's~~
25 ~~share, the transfer shall be based on the methodology adopted~~
26 ~~pursuant to Section 65584.03. If the department allocated the~~
27 ~~county's share, the transfer shall be based on the considerations~~
28 ~~specified in Section 65584.06. The transfer shall neither reduce~~
29 ~~the total regional housing needs nor change the regional housing~~
30 ~~needs allocated to other cities by the council of governments,~~
31 ~~subregional entity, or the department. A copy of the transfer~~
32 ~~finalized by the council of governments or subregional entity shall~~
33 ~~be submitted to the department. The council of governments, the~~
34 ~~subregional entity, or the department, as appropriate, may extend~~
35 ~~the 90-day deadline if it determines an extension is consistent with~~
36 ~~the objectives of this article.~~

37 (d) ~~(1) If an annexation of unincorporated land to a city occurs~~
38 ~~after the council of governments, subregional entity, or the~~
39 ~~department for areas with no council of governments, has made~~
40 ~~its final allocation under Section 65584.03, 65584.04, 65584.06,~~

1 or 65584.08, a portion of the county's allocation may be transferred
2 to the city. The city and county may reach a mutually acceptable
3 agreement for transfer of a portion of the county's allocation to
4 the city, which shall be accepted by the council of governments,
5 subregional entity, or the department, whichever allocated the
6 county's share. If the affected parties cannot reach a mutually
7 acceptable agreement, then either party may submit a written
8 request to the council of governments, subregional entity, or to the
9 department for areas with no council of governments, to consider
10 the facts, data, and methodology presented by both parties and
11 determine the number of units, by income category, that should
12 be transferred from the county's allocation to the city.

13 (2) (A) Except as provided under subparagraph (B), within 90
14 days after the date of annexation, either the transfer, by income
15 category, agreed upon by the city and county, or a written request
16 for a transfer, shall be submitted to the council of governments,
17 subregional entity, and to the department. A mutually acceptable
18 transfer agreement shall be effective immediately upon receipt by
19 the council of governments, the subregional entity, or the
20 department. The council of governments, subregional entity, or
21 the department for areas with no council of governments, shall
22 make the transfer effective within 180 days after receipt of the
23 written request. If the council of governments allocated the
24 county's share, the transfer shall be based on the methodology
25 adopted pursuant to Section 65584.04 or 65584.08. If the
26 subregional entity allocated the subregion's share, the transfer
27 shall be based on the methodology adopted pursuant to Section
28 65584.03. If the department allocated the county's share, the
29 transfer shall be based on the considerations specified in Section
30 65584.06. The transfer shall neither reduce the total regional
31 housing needs nor change the regional housing needs allocated to
32 other cities by the council of governments, subregional entity, or
33 the department for areas with no council of governments. A copy
34 of the transfer finalized by the council of governments or
35 subregional entity shall be submitted to the department. The council
36 of governments, the subregional entity, or the department, as
37 appropriate, may extend the 90-day deadline if it determines an
38 extension is consistent with the objectives of this article.

39 (B) If the annexed land is subject to a development agreement
40 authorized under subdivision (b) of Section 65865 that was entered

1 into by a city and a landowner prior to January 1, 2008, the revised
2 determination shall be based upon the number of units allowed by
3 the development agreement.
4 (3) A transfer shall not be made when the council of
5 governments or the department, as applicable, confirms that the
6 annexed land was fully incorporated into the methodology used
7 to allocate the city's share of the regional housing needs.

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